

Notice of Allowability

Application No.

10/606,671

Examiner

Ruth A. Davis

Applicant(s)

MAXWELL ET AL.

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to response filed on May 10, 2007.
2. ☒ The allowed claim(s) is/are 1-73.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).


* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 20070720.
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____


RUTH DAVIS
PRIMARY EXAMINER

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Jasper Dockery on July 19, 2007.

The application has been amended as follows:

In claim 1, line 5, the phrase "in saliva" has been deleted.

In claim 42, line 3, "an antimicrobial agent wherein the antimicrobial agent comprises" has been deleted.

In claim 42, line 5, "--such that the composition provides a concentration of Magnolia Bark Extract of 0.005% - 0.10% in the oral cavity of a user--" has been inserted before the period.

In claim 43, line 2, "at least" has been deleted.

In line 1 of claims 59 - 61, the phrase "at least" has been deleted.

In claim 62 line 4, "an antimicrobial agent to the aqueous solution, wherein the antimicrobial agent comprises" has been deleted.

Art Unit: 1651

In claim 62, line 5 the phrase --such that the film provides a concentration of Magnolia Bark Extract of 0.005% - 0.10% in the oral cavity of a user-- has been inserted after the term "Extract".

In claim 63, line 2, the phrase "an antimicrobial agent" has been deleted and replaced with the phrase --Magnolia Bark Extract--.

In claim 63, line 3, the phrase "at least" has been deleted.

In claim 64, line 1, the phrase "an anti-microbial agent" has been deleted and replaced with the phrase --Magnolia Bark Extract--.

In claim 70, line 3, the term "an" has been deleted and replaced with --the--.

In claim 70, line 3, the phrase "comprising Magnolia Bark Extract in an amount sufficient to kill or deactivated oral bacteria" has been deleted and replaced with --of claim 1--.

In claim 70, line 5, the phrase "causing" has been deleted and replaced with --administering to--.

In claim 70, line 5, the phrase "to consume" has been deleted.

In claim 71, line 7, the phrase "in saliva" has been deleted.

In claim 72, line 3, the phrase "in saliva" has been deleted.

In claim 73, line 3, the phrase "in saliva" has been deleted.

2. Claims 1 – 41 and 71 – 73 are directed to an allowable product. Pursuant to the procedures set forth in MPEP § 821.04(B), claims 42 - 70, directed to the process of making or using an allowable product, previously withdrawn from consideration as a result of a restriction

Art Unit: 1651

requirement, have been hereby rejoined and fully examined for patentability under 37 CFR 1.104.

Because all claims previously withdrawn from consideration under 37 CFR 1.142 have been rejoined, **the restriction requirement as set forth in the Office action mailed on February 16, 2005 is hereby withdrawn.** In view of the withdrawal of the restriction requirement as to the rejoined inventions, applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth A. Davis whose telephone number is 571-272-0915. The examiner can normally be reached on M-F 7:00 -3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1651

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ruth A. Davis/
Primary Examiner
Art Unit 1651

July 20, 2007